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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,917	08/16/2001	John E. Gunderman	20386/305	2246

7590 11/06/2002

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EXAMINER

GELLNER, JEFFREY L

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 11/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 09/930,917		Applicant(s) GUNDERMAN ET AL.	
Examiner Jeffrey L. Gellner		Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12-20 and 22-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10, 12-14, 16 and 25 is/are allowed.
- 6) ☒ Claim(s) 1-5, 8, 9, 15, 17-20, 22, 23 and 24 is/are rejected.
- 7) ☒ Claim(s) 6 and 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

PETER M. POON
SUPERVISING PATENT EXAMINER
TECHNOLOGY CENTER 3600

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Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 17-20, 22, and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In Claim 17, lines 9 and 10, the “the U-shaped member” lacks antecedent basis.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Wagler (US 2,573,372).

As to Claim 1, Wagler discloses a stackable plant support (Figs. 1 and 4) comprising an upper and lower rings (top and lower rings (11) of Fig. 1 with lowest ring excluded); at least one leg (10 of Fig. 1) attached to the upper and lower rings, the leg adapted to support the upper and lower rings and engage the ground, the leg comprising a ledge (defined as 12 of Fig. 1) shaped so as to permit application of a downward force by a plant support user to engage the plant support

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with the ground, the ledge located below the position of where the lower ring attaches (see Fig. 1); and, the plant support shaped to enclose plants.

As to Claim 2, Wagler further discloses the lower ring having a larger diameter than the upper ring (See Fig. 1).

As to Claim 3, Wagler further discloses a middle ring (middle ring (11) of Fig. 1 with lowest ring excluded).

As to Claim 4, Wagler further discloses the support made of wire (col. 2 lines 5-18) which would be galvanized.

As to Claim 8, Wagler further discloses the upper and lower rings shaped so as to permit insertion of a plant container within the support, the upper ring adapted to engage a portion of the plant container (see Fig. 1).

Claims 17-19, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson (US 3,148,850).

As to Claim 17, Johnson discloses a support member (1 of Fig. 1) for a plant support apparatus comprising at least one leg (3 or 4 of Fig. 1) attachable to upper and lower rings, the leg adapted to support the upper and lower rings and engage the ground, the leg comprising a ledge (7 of Fig. 1) shaped so as to permit application of a downward force by a plant support user to engage the plant support with the ground; and, wherein the ledge is defined by a bend (12 of Fig. 1), the ledge is located below the position where the lower ring attaches to the U-shaped member (rings capable of attachment at region around leadline of 15).

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As to Claim 18, Johnson further discloses the support member an elongated U-shaped member (2,3,4, of Fig. 1; col. 1 lines 39-42) with a closed end (2 of Fig. 1).

As to Claim 19, Johnson further discloses the support made of wire (col. 2 line 36).

As to Claim 22, Johnson further discloses a support member capable of having a loop positioned in the same plane as the two portions of the U-shaped member at the open end or the loop positioned in a different plane as the two portions of the U-shaped member at the open end

Claim 24 is rejected under 35 U.S.C. 102(b) as being anticipated by Briggs (US 1,359,026).

As to Claim 24, Briggs discloses a stackable plant support (Fig. 1) comprising at least one ring (generally a of Fig. 1); at least one leg (3 and 7 of Figs. 1 and 4) attached to the at least one ring, the leg adapted to support the at least one ring (Fig. 1) and to engage the ground (implied from Fig. 1), the leg comprising a ledge (10 of Fig. 1) shaped so as to permit application of a downward force by a plant support user to engage the plant support with the ground, the ledge defined by a bend (10 of Fig. 1) in the leg, the ledge located below the position where the at least one ring attaches to the leg (shown in Fig. 1); wherein the at least one leg is an elongated U-shaped member (Fig. 4) comprising a closed end (1a of Fig. 4) and an open end (region around 2 of Fig. 4) defined by two portions of the U-shaped member; the at least one ring is attached to the at least one leg proximate the closed end (shown in Fig. 1) such that a loop (region around leadlines of 1 in Fig. 1) is formed above the ring by the closed end of the leg; and, the ends of the two portions of the U-shaped member are adapted to engage the ground; and, the plant support is shaped to enclose to enclose plants and support plant containers.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wagler (US 2,573,372) in view of Elliott (US 5,640,802).

As to Claim 5, the limitations of Claim 1 are disclosed as described above. Not disclosed is the support made of plastic. Elliott, however, discloses a support made of plastic (col. 2 lines 66). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the support of Wagler by making it of plastic as disclosed by Elliott so that it is durable enough for reuse (see Elliott at col. 1 lines 48-49).

Claims 9 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagler (US 2,573,372).

As to Claim 9, the limitations of Claim 4 are disclosed as described above. Not disclosed are the rings attached to the at least one leg. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the support of Wagler by welding the legs to the rings so as to strengthen the structure.

As to Claim 15, the limitations of Claim 4 are disclosed as described above. Not disclosed is the wire made of galvanized metal. It would have been obvious to one of ordinary

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skill in the art at the time of the invention to modify the support of Wagler by making the wire galvanized so as to more better resist moisture.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson (US 3,148,850) in view of Elliott (US 5,640,802).

As to Claim 20, the limitations of Claim 17 are disclosed as described above. Not disclosed is the support member made of plastic. Elliott, however, discloses a support made of plastic (col. 2 lines 66). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the support member of Johnson by making it from plastic as disclosed by Elliott depending upon cost of materials.

Allowable Subject Matter

Claims 6 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 10, 16, 12-14, and 25 is allowed over the art of record.

Claim 23 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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Response to Arguments

Applicant's arguments with respect to claims 1-10, 12-20, and 22-25 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wourms et al, Howell, Tyson, Smith, JP8-383223, FR 2664483 A1, JP11-192019, FR 2775755 A1, FR 2614744 A1, and EP 0639343 A1 disclose in the prior art various plant supports with either U-shaped members or ledges or both.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose telephone number is 703.305.0053.

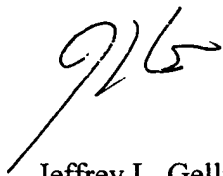
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The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm.

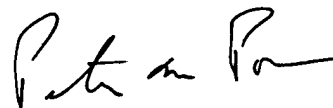
The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The fax phone numbers for the Technology Center where this application or proceeding is assigned are 703.305.7687, 703.305.3597, and 703.306.4195.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner



PETER M. POON
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